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Nayeli Mendez and Hector Martinez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAYELI MENDEZ and HECTOR
MARTINEZ

Case No. C07-02544 VRW

Plaintiffs,

**PLAINTIFFS' MOTION AND NOTICE
FOR DIVISION TRANSFER**

vs.

UNITED STATES OF AMERICA

Defendant.

Nayeli Mendez and Hector Martinez, the plaintiffs in the above entitled cause, move the court pursuant to Civil Local Rules 3-2(f) to transfer this action from the San Francisco division to the Oakland division.

1. This action arose in Alameda County. "A civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred." Civil Local Rules 3-2(c). Here, the events and omissions giving rise to the claim occurred both at La Clinica de la Raza, in Oakland, and at Alta Bates Hospital, in Berkeley. Both Oakland and Berkeley are cities in Alameda County. Since all of the medical negligence alleged occurred in Alameda County, the action did arise in Alameda County within the meaning set forth in Civil Local Rules 3-2(c).
2. Since this action arose in Alameda County, Civil Local Rules 3-2(c) mandates that it

1 be assigned to an Alameda County division. “[E]xcept for Intellectual Property
 2 Actions, Securities Class Actions and Capital and Noncapital Prisoner Petitions or
 3 Prisoner Civil Rights Actions, upon filing, all civil actions and proceedings for which
 4 this district is the proper venue shall be assigned by the Clerk to a Courthouse serving
 5 the county in which the action arises.” Civil Local Rules 3-2(c). Since this is a
 6 medical negligence action, and therefore may not properly be classified as any of the
 7 exceptions to Civil Local Rules 3-2(c), this case must be assigned by the Clerk to a
 8 Courthouse serving the county in which the action arose (Alameda County).

- 9 3. Because it was assigned to a San Francisco division, this action was not assigned to
 10 the proper division in accordance with Civil Local Rules 3-2(c).
- 11 4. Although Civil Local Rules 3-2(d) may authorize some civil actions arising in
 12 Alameda County to be assigned to the San Francisco Division or the Oakland
 13 Division, the rule applies only to civil actions which are not covered under 3-2(c).
 14 “Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of
 15 Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San
 16 Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or
 17 the Oakland Division.” Civil Local Rules 3-2(d). Narrowly construed, this exception
 18 merely applies to cases arising in counties which may not have a Federal District
 19 Court, or that fall into one of the exceptions to Civil Local Rules 3-2(c) which that
 20 provision itself lists. Since this action is covered by Civil Local Rules 3-2(c), and
 21 arose in a county which does indeed have a Federal District Court, Civil Local Rules
 22 3-2(d) does not apply.
- 23 5. Since both plaintiffs live in Oakland, the convenience of the plaintiffs will be
 24 significantly served by transferring the action to Alameda County.
- 25 6. Since the action arose in medical facilities located within Alameda County, numerous
 26 witnesses and pertinent evidence will be located within Alameda County.
- 27 7. The overwhelming convenience of the plaintiffs resulting from a transfer, coupled
 28 with the abundance of evidence and relevant witnesses located within Alameda
 County, both lead to an inference that the interests of justice will be served by
 transferring the action to Alameda County.
8. The trial of this action will in no manner be hindered nor delayed if this action is
 transferred to Alameda County, nor will such transfer be unduly burdensome upon any

1 necessary parties or relevant witnesses.

2 For all the reasons listed herein, plaintiffs request that the Court transfer this action to
3 the Oakland division.

4 SIGNATURE ATTESTATION: I hereby attest that I have on file all holograph signatures for
5 any signatures indicated by a "conformed" signature (/S/) within this efiled document.

6 DATED: May 24, 2007

Respectfully submitted,

7 GWILLIAM, IVARY, CHIOSSO,
8 CAVALLI & BREWER

9 By: /S/
10 STEVEN J. BREWER
Attorneys for Plaintiffs

11 #85079

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Plaintiffs,

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UNITED STATES OF AMERICA

Defendant.

Case No. C07-02544 VRW

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO TRANSFER
ACTION TO OAKLAND DIVISION

A motion has been made by plaintiffs to transfer this action to the United States District Court for the Northern District of California, Oakland Division, pursuant to Civil Local Rules 3-2(f) on the grounds that 1) the action was not properly assigned to the San Francisco Division, or alternatively, that 2) the convenience of the parties and witnesses, and the interest of justice will be served by transferring the action the Alameda County Division.

Now, on reading the pleadings, and on reading and filing the notice of motion dated May 24, 2007, and upon due deliberation, the court finds that it would be in the interest of justice and would meet the convenience of parties and witnesses for this motion to be granted, and it also appears that this action might have been brought before the district court to which this transfer is sought,

1 It is ordered that the motion is granted, and that this action is transferred to the United
2 States District Court for the Northern District of California, Oakland Division.

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4 DATED:

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8 United States District Court for the
Northern District of California

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